

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TERESA BRACK</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>DUFFENS OPTICAL CORP. OFFICE</b>	)	
Respondent	)	Docket No. 256,965
	)	
AND	)	
	)	
<b>TRAVELERS INDEMNITY &amp; SURETY CO.)</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requested review of Administrative Law Judge Bryce D. Benedict's Award dated November 27, 2002. The Board heard oral argument on May 21, 2003. Jeff K. Cooper was appointed as Board Member Pro Tem for the purpose of determining this matter.

**APPEARANCES**

Roger D. Fincher of Topeka, Kansas, appeared for the claimant. Gregory D. Worth of Roeland Park, Kansas, appeared for respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The Administrative Law Judge found (ALJ) that claimant's accidental injury did not arise out of and in the course of employment and therefore denied compensation.

The claimant requests review of whether the accident arose out of and in the course of employment as well as the nature and extent of disability. Claimant contends that both Drs. Douglas M. Rope and Kirk M. Wanless found a causal connection between claimant's work and her throat/voice problems. Claimant argues she's entitled to a 23 percent work disability based on a 0 percent task loss and a 46 percent wage loss or in the alternative a 10-25 percent functional impairment.

Respondent argues the claimant failed to meet her burden of proof that her injuries arose out of and in the course of employment. Respondent further contends the claimant's throat problems were caused by smoking and/or reflux. Respondent requests the ALJ's Award be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award should be affirmed.

The Board agrees with the ALJ's analysis of the evidence as set forth in the Award. It is not necessary to repeat those findings and conclusions in this Order. The Board approves those findings and conclusions and adopts them as its own.

Claimant argues that work caused her to develop benign laryngeal nodules with chronic hoarseness. Dr. Rope relied upon the history claimant provided to conclude that exposure to silica dust at work caused the conditions. The difficulty with that causation conclusion, as the ALJ noted, was that claimant did not establish exposure to silica dust in her workplace. The room where sandblasting occurred was an enclosed space where claimant did not work. And that sandblasting was only performed once a month. Lastly, Dr. Rope agreed that he was not aware of scientific authority linking exposure to silica to the development of laryngeal nodules.

Claimant further notes that when she returned to work wearing a mask, her condition improved. Consequently, she argues that establishes she was being exposed to an irritant in the workplace. But the treating physician, Dr. Wanless, also noted claimant had quit smoking for the same time period she had worn the mask.<sup>1</sup> Because claimant continued to experience problems after being away from the work site for two years, Dr. Wanless agreed claimant's ongoing laryngitis might not have been caused by workplace irritants.<sup>2</sup> And both doctors agreed smoking is a cause for laryngeal nodules and claimant smoked a half pack a day for 20 years.

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<sup>1</sup> Wanless Depo. at 17-18 (Sep. 6, 2001).

<sup>2</sup> Wanless Depo. at 26 (Jul. 18, 2002).

The ALJ concluded claimant failed to establish exposure to silica dust in the workplace and consequently she failed to meet her burden of proof to establish personal injury by accident arising out of and in the course of her employment. The Board agrees and affirms the denial of an award of compensation.

**AWARD**

**WHEREFORE**, it is the finding of the Board that the Award of Administrative Law Judge Bryce D. Benedict dated November 27, 2002, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June 2003.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

- c:     Roger D. Fincher, Attorney for Claimant  
       Gregory D. Worth, Attorney for Respondent and its Insurance Carrier  
       Bryce D. Benedict, Administrative Law Judge  
       Paula S. Greathouse, Workers Compensation Director